

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

JOSE ZAMORA ORTIZ,)	
)	Civil Action No. _____
Plaintiff,)	

vs.

)	NOTICE OF REMOVAL
LANDSCAPE RESOURCES, LLC &)	
JAMES R. HORTON,)	
)	
Defendants.)	
)	
_____)	

TO: UNITED STATES DISTRICT COURT, DISTRICT OF SOUTH CAROLINA:

YOU WILL PLEASE TAKE NOTICE that the Defendants, Landscape Resources, LLC (“LRL”) and James R. Horton (“Horton”) remove the above-captioned case from the Court of Common Pleas, Horry County, South Carolina, into the United States District Court, District of South Carolina, Florence Division. This removal is proper on the following grounds:

I. NATURE OF THE ACTION

On May 23, 2017, Plaintiff Jose Zamora Ortiz (“Plaintiff”) filed his Complaint in the Court of Common Pleas, Horry County, South Carolina, Civil Action No. 2017-CP-26-03165, alleging a claim under the South Carolina Payment of Wages Act, S.C. Code § 41-10-10 *et seq.* (hereinafter “SCPWA”) for overtime wages allegedly owed. *See generally* Plaintiff’s Complaint. Defendants Answered and filed a Motion to Dismiss and supporting Memorandum of Law on June 21, 2017 asserting among other things that the SCPWA does not govern overtime wages and that any claim for overtime wages is preempted by the Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“the FLSA”). On July 14, 2017, Plaintiff filed an Amended

Complaint that added a cause of action under the FLSA. *See* Amended Complaint. Defendants now remove on federal question basis.

II. NOTICE OF REMOVAL IS TIMELY

Defendants were served with a copy of the original Summons and Complaint on May 24, 2017. That Complaint did not contain any federal claims. However, on July 14, 2017, Plaintiff filed an Amended Complaint containing a claim under the FLSA. On that basis, Defendants remove. “[I]f the case stated by the initial pleading is not removable, a notice of removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading...from which it may first be ascertained that the case is one which is or has become removable. 28 U.S.C. § 1446(b)(3). Accordingly, this Notice of Removal is timely as it was filed within thirty (30) days of filing of the Amended Complaint.

III. FEDERAL JURISDICTION EXISTS

“Any civil action brought in a State court of which the District Courts of the United States have original jurisdiction” may be removed to federal court. 28 U.S.C. § 1441(a). Pursuant to 28 U.S.C. § 1331, this Court has original jurisdiction over this civil action because it arises under the Constitution, laws, or treatises of the United States. Plaintiff’s Amended Complaint is brought pursuant to the federal Fair Labor Standards Act, 29 U.S.C. § 201 *et seq.* (“FLSA”). *See* Plaintiff’s Amended Complaint. Federal court jurisdiction to hear actions pursuant to the FLSA exists under the federal question jurisdiction statute, 28 U.S.C. § 1331. Accordingly, this Court has federal jurisdiction over these claims.

This Court also has jurisdiction over the asserted SCPWA claim pursuant to 28 U.S.C. § 1367, as it is related to the federal FLSA claim, and all claims derive from a common nucleus of operative fact. *United Mine Workers v. Gibbs*, 383 U.S. 715, 725, 86 S.Ct. 1130, 16 L.Ed.2d 218

(1966). “[I]n any civil action of which the District Courts have original jurisdiction, the District Court shall have supplemental jurisdiction over all other claims that are so related to the claims in the action within such original jurisdiction that they form part of the same case or controversy” 28 U.S.C. § 1367.

IV. REMOVAL TO THIS DISTRICT IS PROPER

Venue is proper in the United States District Court for the District of South Carolina, Florence Division, because the Horry County Court of Common Pleas sits within this federal district and division and the alleged acts or omissions supposedly occurred in this District. *See* 28 U.S.C. § 1446(a); 28 U.S.C. § 1391.

V. CONSENT AND REMOVAL REQUIREMENTS

Pursuant to 28 U.S.C. § 1446(a), copies of all proceedings, pleadings and orders served to date upon Defendants in this matter are attached hereto as **Exhibit A**.

This Notice of Removal will promptly be served on Plaintiff, and notice of its filing will be promptly filed with the Clerk of Court for the Court of Common Pleas, Horry County, pursuant to 28 U.S.C. § 1446(d). The Notice of Filing the Notice of Removal is attached hereto as **Exhibit B**.

VI. RESERVATION OF RIGHTS

Defendants hereby reserve any and all rights to assert any defenses to Plaintiff’s Amended Complaint and to amend or supplement this Notice of Removal.

WHEREFORE, Defendants, through the undersigned counsel, hereby give notice that the above-titled matter has been timely removed to this Court.

McANGUS GOUDELOCK & COURIE, L.L.C.

s/Amy Y. Jenkins

Amy Y. Jenkins, Federal ID No. 6858

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ATTORNEYS FOR DEFENDANTS

July 19, 2017

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

JOSE ZAMORA ORTIZ,

Plaintiff,

vs.

LANDSCAPE RESOURCES, LLC &
JAMES R. HORTON,

Defendant.

Civil Action No. _____

CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of July, 2017, I electronically filed the foregoing *Notice of Removal* with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

David J. Canty, Esquire
David J. Canty, P.A.
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Attorney for Plaintiff

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